Application number: 10/728,222 **Art Unit:** 3694
Applicant/Appellant: Khai Hee Kwan **Examiner:** Shahid R. Merchant
Title: Method, apparatus and program for user to determine the ownership cost of a motor vehicle.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TO: Commissioner for Patents
Virginia 22313-1450

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AMENDED APPEAL BRIEF

ATTEN: Board of Patent Appeals and Interferences

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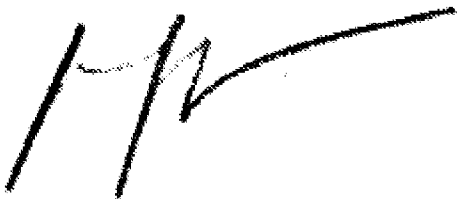
The following brief is resubmitted by amendment in connection to Notification of Non-Complaint mailed 7 April 2008.

15 Thank you.

Yours truly,



20 K H KWAN
Appellant/Applicant
023336
14 April, 2008

REAL PARTY IN INTEREST

The real party in interest is the Applicant/Appellant, Khai Hee Kwan.

RELATED APPEALS AND INTERFERENCES

None

STATUS OF CLAIMS

Claims 2-4, 9-11 and 16-18 are allowable if rewritten or amended to overcome the rejections under 35 USC 112, para 2. Claims 2-4, 9-11 and 16-18 are objected as being dependent on a rejected base claim but allowable if rewritten in independent form including all the limitation of the base claim and any intervening claims. Claim 1 is rejected under USC 112, para 2. Claims 1, 5-8, 12-15, 19 and 20 are rejected under 35 USC 103(a) in view of Mathew Wall (Ref V) herein 'Wall". NOTE that in Reply to Appeal Conference by the examiners, it is now asserted that instead of 35 USC 103(a) rejection, the same claims are now rejected under 35 USC 102(b). This is found at para 5 of said Reply mailed 13 March 2008.

A copy of said claims are contained in the APPENDIX .

STATUS OF AMENDMENTS

No amendment has been filed subsequent to final rejection.

SUMMARY OF THE CLAIMED SUBJECT MATTER

A. Claim 1 – Independent Method

The present invention features a computerized network method linked to a vehicle manufacturer system (See Fig 1 and explanation in page 16 line 10 to page 17 line 10) for allowing potential vehicle buyers to determine the premium of a vehicle option by calculating to lock in a price whereby said user is willing to pay for a new motor vehicle. The premium is calculated based on at least 2 data. The first data is time of delivery. (See Fig 5 and Specification page 20 line 20 to page 21 line 25) The Second data is price of vehicle user is willing to pay. (see page 24 lines 6-20)

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether the examiner's Claim rejection for Claim 1 under 35 USC 112 (2nd Para) at page 3 of Final Action Letter is sustainable ?

B. Whether the examiner's Claim rejection for Claims 1,5-8, 12-15 and 20 under 35 USC 102(b) as corrected in said Reply mailed 13 March 2008 at Para 5 in view of page 5 & 6 of Final Action Letter sustainable ? (NOTE: While the examiner made no mention of claim 19, the appellant believes this is also a matter under this ground.)

ARGUMENT

A. Whether the examiner's Claim rejection for Claim 1 under 35 USC 112 (2nd Para) at page 3 of Final Action Letter (mailed 9 Nov 2007) is sustainable ?

Claim 1, 8, 15

The appellant traverses. Using Claim 1 as representative.

The examiner states that the element "receiving over said network at said central controller, vehicle pricing information comprising first data representative of time to delivery of said new vehicle, a second data representative of a delivery destination of said new vehicle and third data representative of a price said user is willing to pay for said new vehicle;" is ambiguous and confusion as to who or what is providing and receiving the various data. (Page 3 para 8 Final Action). The examiner's contention is " It is ambiguous and confusing as to who or what is providing the various data." (Page 3 para 8 Final Action)

It is respectfully submitted that the above issue is NOT one of indefiniteness but rather "ambiguous and confusion as to who/what is sending". Hence there is no prima facie established by the examiner under 35 USC 112 Para 2 under indefiniteness.

Firstly it is clear the examiner is alleging it is ambiguous and confusion because the claim does not include a 'term or phrase' to identify the sender.

The Federal Circuit has stated the following :

The specification must be sufficiently explicit and complete to enable one skilled in the art to practice the invention, while a claim defines only that which the patentee regards as his invention. 35 USC Para 112. The claim, not specification, measures the invention....[T]he argument that claim 1 must include a limitation found in the specification is legally unsound" (Raytheon Co v Roper Corp., 724 F.2d 951, 220 USPQ 592, 597 (Fed Cir 1992) (quoting Environmental Designs, Ltd v Union Oil., 71 F.2d 693,699, 218 USPQ 865, 870-871(Fed. Cir. 1983), cert denied, 464 US 1043(1984), and citing Smith v Snow, 294 US 1 (1935)).

From the above, it is clear there is no requirement for identifying who is sending such that missing this element/phrase, the entire claimed invention is indefinite in the eyes of one skilled in the art in view of the specification.

Even if the appellant is mistaken which is denied, there is no doubt that these datum are from user or/and manufacturer (even the examiner provided examples showing either user or manufacturer system). Since the examiner could identify then surely one skilled in the art would be able to understand to avoid ambiguity or confusion as alleged or at all.

The examiner even provided the example – vehicle manufacturer sends first and second data and user sending third data which is not ambiguous or confuse to one skilled in the art given the examiner is able to identify who is sending then there is no issue of ambiguity of confusion as who is sending.

It is clear that how the invention is practised can be different to what is being claimed BUT as long as it is patently clear that one skilled in the art (such as the examiner) would know how to practise it from reading the specification, then there is no indefiniteness.

The examiner did not show any reasoning how one skilled in the art would fail to practise this invention as claimed. In fact, the examiner argued that there are two possibilities where the data could have come from. Surely, by able to identify where these data came from (being two sources without experimentations) would show that it is not indefinite.

The appellant ventured the following examples to show that it does not require specifically identifying where the data comes from as seen in US Patent 7,325,253

1. A method for identifying consent to an electronic delivery of information, comprising the steps of: **receiving** the information; **receiving** destination data to electronically deliver the received information; based on the destination data, providing an electronic notification of an availability of the received information and an option to access the received information; **receiving** a first exercise of the option to access the received information; responsive to the exercise of the option, prompting a consent for an electronic delivery of the received information; **receiving** a second exercise of a granting or denial of the prompted consent; responsive to the exercised granting of the requested consent, providing an electronic access to the received information; **receiving** a third exercise of the provided electronic access to the received information; and responsive to the exercised electronic access to the received information, providing the received information.

and in US Patent 7,325,141 below:

1. A method of configuring an access recovery system for a computer system, the method comprising the steps of: a) challenging an authenticatee to supply reference responses to one or more challenges through said computer system; b) **receiving** said reference responses; c) challenging said authenticatee to supply a string of characters to said computer system, said string of characters to be used as a pass phrase; d) **receiving** said string of characters; e) deriving a first encryption key from said pass phrase; f) encrypting said reference responses using said first encryption key and saving resulting encrypted reference responses; g) deriving at least one second encryption key from said reference responses; h) encrypting said first encryption key using said at least one second encryption key and saving said resulting encrypted first encryption key.

The appellant respectfully submit there is a NO need to identify the sender to avoid confusion or ambiguity as the claimed invention does not sought to limit so if at all. Furthermore, these claims merely seek to claim such datum over a network rather than who/what is the sender. There is also nothing to show without identifying the specific sender which must be either vehicle manufacturer or user, one skilled in the art would fail to practice the claimed invention .

For the stated reasons above, it is respectfully submitted that the claims ought to be allowed and the rejection is not sustainable and must be allowed.

B. Whether the examiner's Claim rejection for Claims 1,5-8, 12-15, 19 and 20 under 35 USC 102(b) as amended from said Reply mailed 13 March 2008 at Para 5 in view of page 5 & 6 of Final Action Letter is sustainable ?

In the Final Action Letter mailed 9 Nov 2007, it was asserted by the examiner that Claims 1, 5-8 and 20 are rejected under 35 USC 103(a) in view of Mathew Wall (Ref V) herein 'Wall". However, in Reply to Appeal Conference by the examiners, instead of raising a 35 USC 103(a) rejection, the same claims are now rejected under 35 USC 102(b). This is found at para 5 of said Reply mailed 13 March 2008.

In view of a 102(b), the appellant will submit that not all the elements are found in Wall as *underlined* below by using Claim 1 as the representative for 8 and 15.

1. A method for determining vehicle option premium to purchase or sale a new vehicle over a network connected to a central controller and a plurality of terminals, comprising the steps :

providing a vehicle manufacturer system linked to said network;

receiving over said network at said central controller, vehicle pricing information comprising first data representative of time to delivery of said new vehicle, a second data representative of a delivery destination of said new vehicle and third data representative of a price said user is willing to pay for said new vehicle;

calculating at said central controller the vehicle option premium based on said first data and said third data;

outputting the vehicle option premium to the user for decision over said network;

upon acceptance by said user of said vehicle option premium at said central controller, performing a payment transaction for said premium or a deposit over said network; and

creating a vehicle option contract to lock in said third data.

As can be seen above, the examiner had provided the following rebuttal as found in the Reply mailed 13 March 2008 and similarly in his advisory Action mailed 26 Dec 2007. Because they are substantially the same, the appellant will regard the Reply as authoritative and where there are differences, they will be used in combination.

Element of "Calculating".

The examiners wrote at page 2, para 2 of said Reply mailed 13 March 2008 "A 'calculated' booking fee is implicit, because the fee has to be based on some form of calculation".

Obviously, this is the examiner's opinion and there is no evidence to back this up. The Wall article did not suggest it was calculated and in fact the booking fee is the same for ALL vehicles which could not be calculated. It is also pertinent to note that this calculating is based on said first data and said third data as claimed. The examiner did not provide any evidence to show that such calculation is based on any factors at all. It is well known in the art of calculating to manipulate some

factors. Inherency must be based on reasons that one skilled in the art must be able to recognise the thing. It is submitted the examiner has failed in this respect.

Element of "vehicle manufacturer system linked to said network".

The examiner also said that it is implicit because Broadspeed has to get pricing information and guidance from the vehicle manufacturer so they can set their pricing as it would relate to the pricing that is available through suggested retail pricing that is provided by the manufacturer (page 2, para 3 of Reply mailed 13 March 2008).

The appellant submits that this is hindsight analysis. If pricing and guidance is the issue this could be done off-line given that Boardspeed's prices are fixed and may not need to be queried online in real-time. It is not known in the market that vehicle pricing is volatile (like share prices) and as such real-time data is required. It should be remembered, Boardspeed is designed to accept booking and its vehicle prices are already discounted over normal retail prices, implicit to mean that it does not need prices to be real time to determine the discount or at all.

In contrast, this claimed invention allows for "price said user is willing to pay for" (3rd data) and user to provide a date of delivery (1st data). As stated by Boardspeed, while it can accept bookings, it could not fix the date of delivery (see page 2 of Wall) and it could even take up to one year (ie user has no control). Thus this clearly shows there is no link back to the manufacturer to control this factor and therefore the 'guidance' as reasoned by the examiner is not inherent such that one skilled in the art would instantly recognize the need linking to manufacturer's system.

The appellant respectfully submits the examiner had not been able to establish prima facie and accordingly these elements are not found inherently in Wall.

The datum elements.

This claimed invention requires first data representative of time to delivery of said new vehicle, a second data representative of a delivery destination of said new vehicle and third data representative of a price said user is willing to pay for said new vehicle.

However on this point, the examiner apparently had failed to articulate any reasoning to show one skilled in the art would inherently recognize them in Wall. Neither was this articulated in his final rejection mailed 9 Nov 2007 nor in his Advisory Action mailed 26 Dec 2007 or at all. The examiner merely cited Wall in its entirety however the appellant failed to see any of the datum being received over said network. In Wall, the user simply decides on the vehicle (presumably the discounted price as well) and send a signal to book it by paying 150 pound.

Element "creating a vehicle option contract to lock in said third data."

The examiner asserted that "The booking fee locks in the price of the vehicle as taught by Wall" (See Advisory Action mailed 26 Dec 2007 at page 2 para 3.) The examiner made no comments on this matter in his Reply mailed 13 March 2008. Be that as it may, the problem with the above assertion is that it failed to show the element as claimed. The third data is a price the user is willing to pay for said new vehicle which is received over the network. The examiner wants this Appeal Board to accept that by paying the booking fee the user has locked in the price but is this the price the user is willing to pay (ie third data).

The claimed element reads "receiving over said network at said central controller, vehicle pricing information - third data representative of a price said user is willing to pay for said new vehicle; " (Note, appellant had removed the other two data for clarity).

As can be seen, this third data is received over a network and not as Wall's version which is a discount price already priced in the server. The examiner did not explain this difference between a discount as provided by Broadspeed in its server and a data receive over a network at said central controller. A price the user is willing to pay (third data) is locked by the option contract is inherently different to a booking fee locking in a discount provided by Broadspeed (hence its price) is obvious. Secondly, the price the user is willing to pay is used to calculate the premium (booking fee) which when accepted creates a vehicle option contract as opposed to a booking contract. While one skilled in the art may use premium and booking fee interchangeably but that does not necessarily means a booking contract is inherently the same as a vehicle option contract. The peculiarity of vehicle option contract (which is also not found in Wall) is the existence of the "third data", the same one that was previously received over the network which is not found in Wall. On the other hand, the booking contract includes the discount price of the vehicle found in the Wall's server.

Therefore, not all elements are not found in Wall, the appellant respectfully submits the examiner had failed to show prima facie.

Claims 5,12

The examiner asserts that Wall teach the following :

receiving an indication that a user has purchased the vehicle option;

updating a customer database to record purchase of the vehicle option ; and

posting transaction details accessible by all users.

The examiner applied that it is within the knowledge of one skilled in the art (Advisory Action mailed 26 Dec 2007) "that transaction details regarding a purchase of a vehicle option would be available to the consumer involved in the transaction." The appellant does not deny this. However, the claimed invention ask for "posting transaction details accessible by ALL USERS." and not merely the consumer involved in the transaction as opinioned. It is one thing that the consumer has access to his own transaction but another for all users to see another's transaction. Hence, it is clear this element is not satisfied.

Claims 6,13,19

The examiner asserts Wall taught of purchasing vehicle using vehicle option, making payment and updating database. The appellant respectfully submits Wall did not teach of vehicle option and hence there is no utilization of vehicle option to purchase vehicle or updating database to reflect the vehicle option is used. A booking fee is merely designed to lock in the price as admitted by the examiner. (See page 3 para 5 of Advisory Action mailed 26 Dec 2007). Even if booking fee is

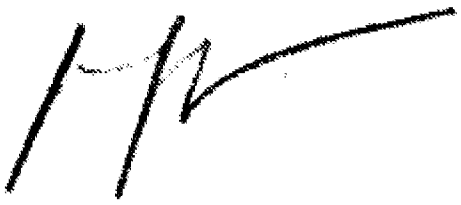
used to lock in the price as suggested by the examiner, this does not mean the booking fee is used to purchase the vehicle if this is not taught by Wall. How is it inherent to show that a booking fee is now updated in the database to reflect the booking fee is used to purchase the vehicle when the same booking fee forms part of the discounted price ? In contrast, the premium paid is separate to the price the user is willing to pay and therefore locked in the vehicle option contract, said premium could now be updated to show it is used. The examiner did not provide any reason to show this inherency and hence no prima facie has been found.

Claims 7,14,20

These claims relate to using vehicle option to SALE a vehicle by user. It is submitted that Wall teach user to BUY vehicle by placing a booking to buy a vehicle. This is also admitted by the examiner when he wrote " Therefore, Broadspeed is requesting the sale of the vehicle using vehicle options (booking fee)." (Advisory Action mailed 26 Dec 2007 at page 3 para 6, underlined mine) It is clear the examiner had confused Broadspeed as USER when it is not in these claims. The user is someone who has a vehicle option (previously obtained) and he is selling the vehicle structured in the option using said option and not Broadspeed selling the vehicle using the booking fee as suggested.

In summary, the appellant respectfully submits all the claims are allowable and the examiner's rejection is unsustainable for the reasons stated above.

Much Obliged,



Khai Kwan

Appellant/Applicant

14 April 2008

Appendix

Text of Claims as per this Appeal.

1. A method for determining vehicle option premium to purchase or sale a new vehicle over a network connected to a central controller and a plurality of terminals, comprising the steps :

providing a vehicle manufacturer system linked to said network;

receiving over said network at said central controller, vehicle pricing information comprising first data representative of time to delivery of said new vehicle, a second data representative of a delivery destination of said new vehicle and third data representative of a price said user is willing to pay for said new vehicle;

calculating at said central controller the vehicle option premium based on said first data and said third data;

outputting the vehicle option premium to the user for decision over said network;

upon acceptance by said user of said vehicle option premium at said central controller, performing a payment transaction for said premium or a deposit over said network; and

creating a vehicle option contract to lock in said third data.

2. The method according to claim 1, whereby said calculating is using binomial option pricing model.

3. The method according to claim 1, wherein for said calculating step the vehicle option premium is based at least in part on formula:

Vehicle option premium = B*D*L*V

B represents a base value, D is factor related to a period before delivery date, V is factor related to a historical volatility of prices for the new vehicle and L is factor related to expected interest in the new vehicle.

4. The method according to claim 1, wherein the calculating step for the vehicle option premium is based on a modified Black Scholes consisting :

$$Xe^{-rT} N(-d_2) - S N(-d_1)$$

Where **S** represents a current price of new vehicle,

N( ) represents an area under the normal curve,

X represents said price the user is willing to pay for said new vehicle,

r represents a risk-free interest rate,

T represents said time to delivery of said new vehicle,

σ represents a volatility of the new vehicle logarithmic price,

$\mathbf{d_2} = d_1 - \sigma T^{1/2}$ and $d_1 = [\ln(S/X) + (r + \sigma^2/2) T] / \sigma T^{1/2}$.

5. The method according to claim 1, further comprising the steps of :

receiving an indication that a user has purchased the vehicle option;

updating a customer database to record purchase of the vehicle option ; and

posting transaction details accessible by all users.

6. The method according to claim 1, further comprising the steps of:

receiving a user's request to purchase a vehicle utilising user's vehicle option;

performing a payment transaction to pay the price; and

updating a database to reflect the vehicle option is used.

7. The method according to claim 1, further comprising the steps of:

receiving a user's request to sell vehicle using user's vehicle option;

performing a payment transaction to pay the price; and

updating a database to reflect the vehicle option is used.

8. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 1 .

9. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 2 .

10. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 3 .

11. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 4 .

12. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 5 .

13. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 6 .

14. A computer program product for use in a system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer program product comprising:

a computer usable medium having computer readable program code physically embodied therein, said computer program product further comprising:

computer readable program code implementing the method of claim 7 .

15. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 1.

16. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 2.

17. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 3.

18. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 4.

19. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 6.

20. A computer system having at least one client workstation and one network server coupled to said network environment, wherein said network environment is a distributed hypermedia environment, the computer implementing the method of claim 7.

Evidence Appendix

NONE

Related Proceedings Appendix

NONE

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